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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0947-21
A-3159-21

IN THE MATTER OF CURIO HOLDINGS NJ, LLC'S APPLICATION FOR A PERMIT TO OPERATE A VERTICALLY INTEGRATED ALTERNATIVE TREATMENT CENTER IN THE CENTRAL REGION OF NEW JERSEY.

IN THE MATTER OF CURIO HOLDINGS NJ, LLC CHALLENGE TO THE WBE CERTIFICATIONS OF ALTUS NEW JERSEY LLC, HOLISTIC NJ I LLC, and CHM CONSULTING, LLC.

Argued May 23, 2023 – Decided August 30, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the New Jersey Cannabis Regulatory Commission (A-0947-21) and from the New Jersey Department of the Treasury (A-3159-21).

Paul P. Josephson argued the cause for appellant Curio Holdings NJ, LLC (Duane Morris LLP, attorneys; Paul P. Josephson, James R. Hearon, Matthew M. Caminiti, and Miranda S. Bovit, of counsel and on the briefs).

Mark McNally, Deputy Attorney General, argued the cause for respondent New Jersey Cannabis Regulatory Commission (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Jacqueline R. D'Alessandro, Deputy Attorney General, on the brief).

James J. Robinson, Jr., Deputy Attorney General, argued the cause for respondent New Jersey Division of Revenue and Enterprise Services (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; James J. Robinson, Jr. and Judith M. O'Malley, Deputy Attorneys General, on the brief).

Maeve E. Cannon argued the cause for respondent Altus New Jersey LLC (Stevens & Lee, PC, attorneys; Maeve E. Cannon, of counsel and on the briefs; Michael A. Cedrone, on the briefs).

Kathleen McGee (Lowenstein Sandler LLP) of the New York bar, admitted pro hac vice, argued the cause for respondent Holistic NJ I LLC (Lowenstein Sandler LLP, attorneys; Christopher S. Porrino, Kathleen McGee, and Lauren E. Van Driesen, of counsel and on the briefs).

PER CURIAM

In these two appeals, which we consolidate for purposes of this opinion, appellant Curio Holdings NJ, LLC (Curio) contests the denial of its application

for one of two permits to operate a vertically integrated alternative treatment center (AT Center) in the central region of New Jersey. Curio contends that several of its competitors received inflated scores as women-owned business enterprises (WBEs) when they were not really WBEs and without those inflated scores Curio would have been awarded a permit.

In A-0947-21, Curio appeals from the Cannabis Regulatory Commission's (CR Commission) decisions to award permits to Altus New Jersey, LLC (Altus) and Holistic NJ I, LLC (Holistic) and deny Curio's challenges to those awards. Curio argues the CR Commission erroneously gave Altus and Holistic higher scores based on their status as WBEs. Altus and Holistic had been certified as WBEs by the New Jersey Department of Treasury (Treasury), through its Division of Revenue and Enterprise Services (DORES).

In A-3159-21, Curio appeals from Treasury's denial of its challenges to the WBE certifications issued to Altus, Holistic, and CHM Consulting, LLC (CHM). CHM had also applied for a permit to operate an AT Center in the central region and, although it was not awarded one of the two permits, scored higher than Curio because it had a WBE certification.

Having reviewed the arguments of the parties in light of the law and record, we affirm the decisions of both the CR Commission and Treasury. The

CR Commission correctly relied on the WBE certifications issued by Treasury. We discern nothing arbitrary, capricious, or unreasonable in Treasury's denial of Curio's challenges to the WBE certifications issued to Altus, Holistic, or CHM. In making that ruling, we note that Altus and Holistic are subject to continued monitoring by Treasury to ensure that they are, in fact, operating as WBEs.

I.

We discern the relevant facts and procedural history from the two administrative records. To put Curio's appeals and its challenges in context, we summarize the WBE certification process and the AT Center application process.

A. The WBE Certification Process.

The Legislature has given Treasury authority to establish procedures for certifying the eligibility of a business to represent itself as a "women's business." See N.J.S.A. 34:1B-227; N.J.S.A. 52:27H-21.19 and -21.20; see also N.J.A.C. 17:46-1.1 to -1.12 (establishing procedures for certification). A "women's business" is defined as:

> a business which is:
>
> > (1) A sole proprietorship owned and controlled by a woman; or

> (2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
>
> (3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or, if stock is issued, at least 51% of the stock is owned by one or more women.
>
> [N.J.S.A. 52:27H-21.18(i).]

See also N.J.A.C. 17:46-1.2; N.J.A.C. 17:46-1.3(c) and (d).

To be certified, an applicant must be screened "to [e]nsure that businesses seeking certification are not misrepresenting their status as . . . women's businesses . . . and that the . . . women's business applicants are, in fact, in the control of . . . women, and are not merely 'fronts' for businesses controlled by persons other than . . . women." N.J.S.A. 52:27H-21.20(d). Furthermore, businesses that have been certified must be "[m]onitor[ed] . . . to [e]nsure continued compliance with the criteria for certification and control by the appropriate persons." N.J.S.A. 52:27H-21.20(e).

In July 2019, Altus applied to DORES for a WBE certification. Altus represented that it was an LLC established in June 2018, and its principal owner, managing member, and chief executive officer was Katherine Bio, who owned fifty-one percent of the business. Altus identified the other member-owners as Jonathan Goldrath and Robert Pease, each of whom was represented to own 24.5 percent of the business. Pease was identified as the contact person for the business.

Altus also provided DORES with a copy of its articles of organization and its operating agreement. The articles of organization stated that management of the company would be vested in the board of directors. The operating agreement, however, stated that the business would be managed by its members, with "all decisions respecting the management, operation, and control of the business and affairs of the company . . . made by a vote of over fifty percent of the members' ownership-interest." On August 6, 2019, DORES issued to Altus a WBE certification, which expired on August 5, 2022.

In July 2019, Holistic also applied to DORES for a WBE certification. Holistic represented that it was a partnership, albeit organized as an LLC, established in July 2019. It stated that its managing member was Amy Singer, who owned forty-two percent of the business. The other identified female

owners were Morgan Greenhouse Genderson and Staci Walkes, each of whom owned nine percent of the business.

Holistic provided DORES a copy of its LLC agreement, which stated that the business would be managed by a five-member board of managers consisting of Amy Singer, Morgan Greenhouse Genderson, Staci Walkes, Joshua Genderson, and Sam Amoia. Each member of the board would have a single vote, and management decisions would require the vote of a majority of the board of managers. Concerning the day-to-day management of the business, Holistic's LLC agreement stated that those responsibilities would be delegated to "officers, agents and employees," who would be appointed, supervised, and overseen by the board of managers. Holistic informed DORES that in 2019 its only officer was Amy Singer, who was the president of the LLC. On August 2, 2019, DORES issued to Holistic a WBE certification, which expired on August 1, 2022.

In July 2019, CHM also applied to DORES for a WBE certification. It represented that it was an LLC established in May 2019, and was 100 percent owned by Morgan Zitelli, who was the president and chief operating officer. CHM also informed DORES that Nicholas Zitelli, Morgan's husband, was a managing member. The materials provided to DORES disclosed that American

CHM Investments, Inc. was an investor in CHM. On August 14, 2019, DORES issued to CHM a WBE certification, which expired on August 13, 2022.

B. The AT Center Application Process.

The medical use of cannabis in New Jersey is authorized by and addressed in the Jake Honig Compassionate Use Medical Cannabis Act (the Act), N.J.S.A. 24:6I-1 to -30. See In re Application for Med. Marijuana Alt. Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343, 355-56 (App. Div. 2020). The Act established the CR Commission "in, but not of, the Department of Treasury." N.J.S.A. 24:6I-24. When it was formed, the CR Commission "assume[d] all powers, duties, and responsibilities with regard to the regulation and oversight of activities, authorized [by the Act]" that had previously been assigned to the Department of Health (DOH). N.J.S.A. 24:6I-24(a)(1). The Act directed the CR Commission to adopt regulations to effectuate the purpose of the Act. N.J.S.A. 24:6I-7(i) and -16. Accordingly, the CR Commission has promulgated regulations. See N.J.A.C. 17:30A-1.1 to -13.11.

The Act seeks "to promote participation in the medical cannabis industry by persons from socially and economically disadvantaged communities, including promoting applications for, and the issuance of, medical cannabis cultivator, medical cannabis manufacturer, and medical cannabis dispensary

permits to certified minority, women's, and disabled veterans' businesses." N.J.S.A. 24:6I-7.2(g); see also N.J.S.A. 24:6I-25; N.J.A.C. 17:30A-6.2(a)(6); N.J.A.C. 17:30A-7.1(b)(2)(xiii).

In July 2019, the DOH issued a request for applications (RFA) to operate certain types of medical cannabis businesses in New Jersey. Among other types of permits, the RFA anticipated issuing four permits to operate vertically integrated AT Centers, which would allow the successful applicants to cultivate, manufacture, and dispense cannabis. The RFA explained that one permit would be issued in the north, central, and south regions of New Jersey, with an additional permit for one of the regions based on the overall scores of applicants and patient needs. The RFA stated that applicants would be reviewed "for completeness and truthfulness" and "may be disqualified for the submission of incomplete or false information." In addition, the RFA stated that applicants could be rejected if they provided "misleading or inaccurate answers."

The RFA explained that applicants would be scored on a 900-point scoring rubric and that scores would be awarded by a nine-member committee, comprised of State employees with various expertise. Criterion 7, Measure 3 (Criterion 7.3) of the RFA scoring criteria addressed minority-owned, women-owned, and veteran-owned businesses. The criterion stated:

> Applicants shall provide a copy of certification(s) issued by the Department of Treasury, Division of Revenue which verifies MBE/WBE certification or VOB certification, or evidence that the applicant would otherwise meet the MBE/WBE certification or VOB certification requirements once generating revenue. Applicants with a certification will receive the full 30 pts. Applicants that provide evidence of meeting the criteria in the future shall receive partial credit, based on the strength of the evidence. The selection committee shall take into account related entities for this measure. 30 pts.

Applicants for a vertically integrated AT Center permit could be awarded up to ninety points on this criterion.

In April 2021, the CR Commission assumed responsibility for the RFA, taking over the responsibilities formerly assigned to the DOH. N.J.S.A. 24:6I-24(a)(1). The CR Commission received forty-nine applicants for vertically integrated AT Center permits. The applicants for the central region included Curio, Holistic, Altus, and CHM. Altus, Holistic, and CHM submitted their 2019 WBE certifications issued by Treasury in support of their applications. Curio did not submit a WBE certification.

In scoring the applications, the selection committee members were divided into three teams, and each team had three members. Team members were responsible for reviewing and scoring a portion of the applications using specific criteria and measures. Team three of the selection committee measured

four criteria concerning "[w]orkforce development, labor compliance, business development, and the certification of minority-owned, women-owned, and disabled-veteran[-]owned businesses." One scorer with expertise in business development and minority-owned, women-owned, and veteran-owned business certifications scored Criterion 7.3.

In October 2021, the CR Commission awarded four vertically integrated AT Center permits: two in the central region, one in the northern region, and one in the southern region. The permits for the central region were awarded to Altus and Holistic. Curio was not awarded a permit. The central region scores, rankings, and points for Criterion 7.3 were as follows:

Applicant	**Score**	**Criterion 7.3 Points**
Altus	785.00	90
Holistic	776.67	90
CHM	746.67	90
Mission NJ	738	90
AP NJ Health LLC	733.33	45
Curio	719.33	3
Quest Brands d/b/a Relative Health and Wellness	713.67	75
Jushi Ampal NJ LLC	680.67	3
Revolution NJ LLC	670.33	60
Pure NJ LLC	669	90
Trulieve Inc NJ	622.67	3
ULNJ LLC	483.33	3

After awarding the scores, the CR Commission performed a quality control review and an audit of the scores and score sheets. "For Criteria 7.1 through 7.3, where an all-or-nothing or partial credit scale was used, [the] CR [Commission] staff examined the distribution of zero (0), partial, and full credit values to assure the reviewers' of scores were consistent with the scoring rubric."

Following its final decision with respect to the 2019 RFA, the CR Commission issued post-award accountability measures. Those measures included requirements that an awardee who had received scores as a women-owned business needed to confirm that it still possessed a valid WBE certification issued by Treasury. The measures also required that an awardee maintain the certification as an ongoing material condition of the award. Furthermore, the measures stated that if an award is rescinded due to an applicant's failure to abide by the post-award requirements, the next highest scoring applicant would be considered by the CR Commission for the award of the permit.

Although Altus and Holistic had been awarded WBE certifications that stated their certifications expired in August 2022, Treasury later realized that those expiration dates were mistakes. Altus and Holistic were both first-time applicants and their initial certifications should have been for one year. See

N.J.S.A. 52:27H-21.22a. When Altus and Holistic did not submit new applications in 2020, their certifications were revoked in October and November 2020.

In October 2021, Holistic and Altus submitted new applications to Treasury for WBE certifications. DORES treated both applications as initial applications, rather than applications for recertification. That same month, Treasury, through DORES, issued WBE certifications to Altus and Holistic.

C. Curio's Challenges to the AT Center Permit Awards.

The CR Commission also established a process under which "[a]ny applicant with questions regarding the 2019 RFA process and methodology, and any unsuccessful applicant that wishe[d] to file a grievance with the [CR] Commission, [could] do so by submitting their question or grievance in writing" by October 19, 2021. In accordance with that grievance process, Curio submitted a letter to the CR Commission posing numerous questions, including questions concerning the scoring of applicants who had WBE certifications. Curio questioned whether Holistic and Altus were "truly managed and operated by a minority or [a] woman." Curio asked the CR Commission to "reevaluate whether the[] [WBE] certifications [of Altus and Holistic] were warranted and if not, adjust their scores accordingly."

On November 10, 2021, the CR Commission issued a memorandum responding to certain questions, including the questions related to Criterion 7.3. Shortly thereafter, the CR Commission responded to Curio's specific grievance. Concerning the scoring on Criterion 7.3, the CR Commission referred Curio to the scoring instructions, which explained applicants that submitted a Treasury-issued certification would receive the highest possible score. In short, the CR Commission rejected Curio's challenges and informed it that the permit awards were final.

On November 29, 2021, Curio filed a notice of appeal of the CR Commission's denial of its application. That appeal was docketed under No. A-0947-21. Two days later, Curio moved for a stay of any further administrative action pending its appeal, but the CR Commission denied the stay. Thereafter, Curio moved for a stay before us, which we denied.

D. Curio's Petition to Treasury.

Meanwhile, on December 1, 2021, Curio filed a petition with Treasury, challenging the WBE certifications issued to Altus, Holistic, and CHM. Curio requested discovery and a hearing on its petition. Thereafter, Treasury appointed a hearing officer to address Curio's challenges.

In its petition, Curio presented documents and arguments contesting the validity of the WBE certifications issued to Altus, Holistic, and CHM. Concerning Altus, Curio questioned the professional qualifications of Katherine Bio and presented evidence that she was a registered nurse who had no experience in the medical cannabis industry and no experience in managing the affairs of a cannabis business. Curio pointed out that Katherine's husband Peter Bio, in contrast, had been deeply involved in the cannabis industry and that he, together with Goldrath, were partners in a private cannabis-investment firm, FocusGrowth Asset Management, LP. Peter Bio and Goldrath were also founders and partners of Standard Farms, LLC, a Pennsylvania-licensed cannabis cultivator.

Curio argued that Goldrath had made statements at a hearing in Flemington indicating that Altus was not an independent business owned and operated by Katherine Bio. Curio also presented evidence of a 2018 lawsuit filed by Lisa Pabon, a former controller at Standard Farms. In that litigation, Pabon alleged that Goldrath and Peter Bio had instructed her to defraud the State of New Jersey by certifying that she was employed by Altus as its chief administrative officer and equal employment opportunity director. In short, based on that evidence, Curio argued that Katherine Bio did not independently

own, operate, and control Altus and Altus had defrauded Treasury to obtain the WBE certification.

As to Holistic, Curio pointed out that Amy Singer's educational background was in journalism and she had no experience in operating a cannabis business. By contrast, Curio contended that Singer's husband was a partner at a law firm that regularly represented Holistic Industries, a privately-owned multi-state operator of cannabis businesses in numerous jurisdictions. Curio argued that Holistic Industries was the true owner and manager of Holistic.

Regarding CHM, Curio contended that Morgan Zitelli had no experience in the medical-cannabis industry; rather, her career had been in the music and event industries. Her husband Nicholas Zitelli, by contrast, had extensive experience in the cannabis industry and had served as the chief executive officer of CHM, as well as director of Chemistree Technology, Inc. (Chemistree), a cannabis company with assets in Washington and California, and CHM's parent company. Curio also noted that Chemistree's "stated strategy is to 'acquire and develop vertically integrated cannabis assets, leveraging management's decades of expertise in the cannabis industry and corporate finance to own and operate licensed cultivation, processing, distribution, and retail facilities.'" Curio further alleged Chemistree had issued a press release, quoting Nicholas Zitelli,

stating that "its 'outlook in the Garden State' ha[d] 'greatly increased' because [of] . . . disqualification of certain applicants in the 2019 RFA, for which Chemistree had applications pending under CHM."

Altus, Holistic, and CHM opposed Curio's petition to Treasury. The opposition included certifications from people involved in the businesses and disputed Curio's contentions regarding who owned and operated the businesses.

Curio also requested discovery in connection with its petition. Holistic, Altus, and CHM opposed that request. The hearing officer ruled that Curio was entitled to some documents, including the WBE applications filed by the companies in 2019. The hearing officer also ruled, however, that Curio was not entitled to the vast amount of discovery it was seeking.

After conducting a case management conference on March 18, 2022, the hearing officer ruled that an in-person presentation would not be conducted. Instead, Curio's petition would be considered on the papers. On June 3, 2022, Treasury issued three final agency decisions denying Curio's challenges to the WBE certifications issued to Altus, Holistic, and CHM. Concerning Altus and Holistic, Treasury upheld both the 2019 and 2021 WBE certifications and treated the certifications as initial certifications. Regarding CHM, Treasury

upheld its 2019 WBE certification, noting that CHM had not filed for recertification.

In upholding Altus' 2019 WBE certification, Treasury found that Katherine Bio owned and controlled Altus based on the company's LLC agreement. Treasury acknowledged that its determination to uphold the certification was based on representations and documents submitted by Altus because Altus, which had not yet received a permit to operate a vertically integrated AT Center when it received that initial certification, was not an operating business. Treasury also upheld the grant of the 2021 WBE certification to Altus. In doing so, Treasury again relied on Altus' operating agreement to conclude that Katherine Bio both owned and controlled the company. In that regard, the hearing officer noted that in October 2021, Altus had just received its permit to operate the AT Center and, therefore, the company had not yet begun to operate.

Treasury also upheld Holistic's 2019 and 2021 WBE certifications. Regarding the 2019 certification, the hearing officer concluded: "Based upon the information submitted for initial certification in 2019, Amy Singer, Morgan Greenhouse Genderson, and Staci Walkes together have the requisite experience to manage day-to-day operations of Holistic." Treasury also concluded that the

three women controlled the business based on the terms of the LLC agreement. Concerning the 2021 certification, Treasury found that Singer, Greenhouse Genderson, and Walkes continued to own and control Holistic. In making that finding, Treasury relied on the company's LLC agreement because the business was a newly formed entity, and, like Altus, had only just received the permit to operate an AT Center.

In considering the 2021 certifications to Altus and Holistic, Treasury agreed with DORES' conclusion that the businesses' applications should be treated as first-time applications rather than applications for recertification and reviewed under that standard. In that regard, the hearing officer noted the "governing statutes and regulations do not specify if, after a gap year, a subsequent application should be reviewed as a preliminary application . . . or whether it should be reviewed in accordance with the more robust requirements set forth at N.J.S.A. 52:27H-21.22a and N.J.A.C. 17:46-1.4(b)." Moreover, Curio had not "challenge[d] that [DORES] applied the wrong certification criteria to the review of" Altus' and Holistic's 2021 applications.

Regarding CHM, Treasury upheld the 2019 WBE certification. Treasury concluded that Morgan Zitelli owned and controlled CHM by focusing on CHM's start-up status. Treasury explained:

> As intended by the [L]egislature, the WBE [c]ertification may assist such a new start up in creating the opportunities for the newly established women[-] owned business to succeed. With a multi-tiered application process the statute is intended to provide a less rigorous review process for first[-]time applicants. The statute then requires a complete re-application after one year to establish that the ongoing concern is truly operating as a [w]omen-[o]wned [b]usiness within [the] spirit and letter of the law. Upon re-certification, [DORES] may engage in a more robust review and analysis of the applicant's ownership and control to determine whether the applicant continues to qualify for a women-owned business certification.

In June 2022, Curio filed a single notice of appeal from Treasury's three final agency decisions. Curio later filed a motion seeking approval to challenge the three Treasury final agency decisions in one appeal and to consolidate that appeal with its appeal of the CR Commission's permit awards. We allowed Curio to file one appeal from Treasury's three rulings but denied its motion to consolidate that appeal with the appeal from the CR Commission's decisions. Instead, we directed that the two appeals be calendared back-to-back and accelerated.

II.

In its appeal from the CR Commission's decisions, Curio argues that Altus and Holistic are "mere fronts for male-dominated entities" and their WBE certifications were obtained "fraudulently." Curio also contends that the CR

Commission failed to verify the WBE status of Altus and Holistic and that the scoring of Criterion 7.3 was arbitrary and capricious. In addition, Curio contends that Altus violated the CR Commission's post-award accountability measures and the CR Commission acted arbitrarily and capriciously in failing to enforce those measures. Ultimately, Curio requests that we order the CR Commission to award Curio a permit to operate an AT Center in the central region.

In its appeal from Treasury's decisions, Curio argues that Treasury failed to properly analyze and decide whether Altus, Holistic, and CHM were qualified for WBE certifications. Curio also contends that Treasury used the wrong standard in evaluating the three businesses' WBE status, limiting its review to the businesses' organizational documents and ignoring compelling evidence that those businesses were not women's businesses. Further, Curio asserts that the hearing officer should have conducted an in-person hearing in evaluating its challenges to the WBE certifications.

An appellate court's review of an administrative agency's final decision is limited. Commc'ns Workers of Am., AFL-CIO v. N.J. Civ. Serv. Comm'n, 234 N.J. 483, 515 (2018). "[A] 'strong presumption of reasonableness attaches to [an agency decision].'" Parsells v. Bd. of Educ. of Somerville, 472 N.J. Super.

369, 375 (App. Div. 2022) (alterations in original) (quoting In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001)), aff'd as modified, 254 N.J. 152 (2023). We will not "disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

Moreover, courts generally "afford substantial deference to an agency's interpretation of a statute that it is charged with enforcing." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007). "'[A] strong presumption of reasonableness' attends an agency's exercise of its statutorily delegated duties, which 'is even stronger when the agency has delegated discretion to determine the technical and special procedures to accomplish its task.'" Caporusso v. N.J. Dep't of Health & Senior Servs., 434 N.J. Super. 88, 103 (App. Div. 2014) (alteration in original) (quoting In re Application of Holy Name Hosp., 301 N.J. Super. 282, 295 (App. Div. 1997)). "As long as the

agency decision is contemplated under its enabling legislation, the action must be accorded a presumption of validity and regularity." A.M.S. ex rel. A.D.S. v. Bd. of Educ. of Margate, 409 N.J. Super. 149, 159 (App. Div. 2009) (citation omitted). An appellate court, however, is not "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." G.C. v. Div. of Med. Assistance & Health Servs., 249 N.J. 20, 40 (2021) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Applying our deferential standard of review, we discern nothing arbitrary, capricious, or unreasonable in the CR Commission's award of the permits for AT Centers in the central region and in its decision rejecting Curio's challenges to those permit awards. We also discern nothing arbitrary, capricious, or unreasonable in Treasury's decisions rejecting Curio's challenges to the WBE certifications issued to Altus, Holistic, and CHM.

III.

In its appeal from the decisions by the CR Commission, Curio contends the Commission erred in denying its application and awarding AT Center permits to Altus and Holistic. In making that argument, Curio primarily contests the points awarded to its competitors for their WBE certifications. In that regard, Curio argues the CR Commission acted arbitrarily and capriciously in

awarding ninety points to Altus and Holistic because they possess WBE certifications, and the CR Commission did not independently investigate the validity of those certifications.

We discern no reversible error in the CR Commission's decision to award points to Altus and Holistic based on their submissions of WBE certifications issued by Treasury. The RFA expressly stated that applicants with Treasury certifications would receive the maximum points available for Criterion 7.3. Altus and Holistic submitted WBE certifications issued by Treasury.

The CR Commission was not obligated to investigate the validity of Treasury-issued WBE certifications. The Legislature has tasked Treasury with the responsibility to issue WBE certifications. See N.J.S.A. 52:27H-21.17 to -21.24; N.J.A.C. 17:46-1.1 to -1.12. Other state agencies are obliged to accept Treasury's certifications. In that regard, N.J.S.A. 52:27H-21.19 states:

> Notwithstanding the provisions of any law, rule, or regulation to the contrary, [DORES] shall have the exclusive authority within State government to certify to public agencies the eligibility of a business to bid on contracts as a "minority business" or "women's business" under any program conducted by the public agency for which such certification is so required. That certification by [DORES] shall be binding on the public agency.

That statute applied to the RFA, which was equivalent to a public bidding matter. Moreover, the permits for an AT Center effectively constituted a "program conducted by [a] public agency for which such certification is so required." Ibid.

Curio relies on N.J.S.A. 24:6I-25 to contend that the CR Commission had the responsibility to evaluate applicants' status as women's businesses. N.J.S.A. 24:6I-25 established in the CR Commission an "Office of Minority, Disabled Veterans, and Women Cannabis Business Development," and that office is required to establish certification procedures for minority businesses, women's businesses, and disabled veteran's businesses. N.J.S.A. 24:6I-25(b)(1).

N.J.S.A. 24:6I-25, however, was adopted on July 2, 2019, the day after the RFA was issued. L. 2009, c. 153, § 32. Moreover, the CR Commission has not yet established criteria for certification of women's businesses. Instead, the CR Commission's regulations in place at the time of the RFA stated that until the Commission created its own process, it would rely on Treasury's WBE certifications. N.J.A.C. 17:30-6.4. In short, given the language of the RFA and the status of the law when the AT Center permits were awarded, it was reasonable for the CR Commission to rely on the certifications issued by Treasury.

We also reject Curio's arguments regarding the CR Commission's scoring of Criterion 7.3. The RFA provided that applicants who do not submit a Treasury certification could still receive some points if they provided "evidence of meeting the criteria in the future." Initially, we note that Altus and Holistic received all the points available under Criterion 7.3. Accordingly, this argument related to other applicants. Nevertheless, the record demonstrates that the CR Commission complied with the RFA and its scoring instructions when it awarded partial credits to applicants who did not have Treasury certifications. Furthermore, the CR Commission issued responses to Curio's grievance concerning the scoring process, and we discern nothing arbitrary, capricious, or unreasonable in the CR Commission's responses.

In addition, the record does not reflect any failure on the part of the CR Commission to enforce its post-award accountability measures. After Altus was awarded its permit, it lost support from the municipality where it had planned to operate. The CR Commission then required Altus to file for an amended permit to change the location of its AT Center. See N.J.A.C. 17:30A-7.8 and -7.10. Altus filed for an amended permit and provided evidence that it had obtained municipal approval for a different location; the CR Commission approved the amended permit.

In summary, we discern nothing arbitrary, capricious, or unreasonable in the CR Commission's decisions to award AT Center permits to Altus and Holistic and deny a permit to Curio based on the scoring of the various applications. Therefore, we affirm the final agency decisions appealed in A-0947-21.

IV.

In its challenges to the decisions by Treasury, Curio argues that Treasury established an inadequate record and applied the wrong standard in evaluating the WBE status of Holistic, Altus, and CHM. Curio contends that Treasury "ignored" compelling evidence that Altus, Holistic, and CHM are not independently owned and controlled by women. Given the start-up status of the businesses and our deferential standard of review, we discern no reversible errors in Treasury's decisions.

The Legislature has authorized Treasury to establish unified procedures for certifying the eligibility of a business as a "women's business." See N.J.S.A. 34:1B-227; N.J.S.A. 52:27H-21.19; N.J.S.A. 52:27H-21.20. In that regard, the Legislature has stated:

> A unified procedure for the certification of businesses owned by minorities and women, administered by the State, for the purpose of certifying the eligibility of the businesses for various State programs will eliminate

> duplication of effort and improve efficiency, thereby increasing productivity and reducing costs in the public and the private sectors.
>
> [N.J.S.A. 52:27H-21.17(e).]

A women's business is defined as a business "owned and controlled by" one or more women. N.J.S.A. 52:27H-21.18(i). If the business is a partnership, joint venture, corporation, or other entity, then women must own at least fifty-one percent of the entity and the entity must be controlled by one or more of the women who own it. Ibid.; see also N.J.A.C. 17:46-1.2; N.J.A.C. 17:46-1.3(c) and (d). "The ownership and control by . . . women shall be real, substantial, and continuing, demonstrating authority over the affairs of the business, and shall go beyond the pro forma ownership of the business as reflected in its ownership documents." N.J.A.C. 17:46-1.3(d)(1).

The term "control" is defined as:

> [A]uthority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions and the rights of other shareholders or joint partners; except that control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is . . . a male owner or employee, in the case of a women's business, is disproportionately responsible for the operation of the business or for policy and contractual decisions.

[N.J.S.A. 52:27H-21.18(a).]

See also N.J.A.C. 17:46-1.2 ("[C]ontrol shall not be deemed to exist where someone, other than . . . a woman, is disproportionately responsible for the operation of a business, or for policy and contractual decisions.").

An entity seeking WBE certification must make an initial application and, if approved, the initial certification is granted for one year. N.J.S.A. 52:27H-21.22a. The entity must "apply for recertification as a . . . women's business one year after the original certification was issued." Ibid. Thereafter, the business must "apply for recertification every five years." N.J.S.A. 52:27-21.22b. In making those applications, the entity must use forms promulgated by Treasury and submit documents and information identified by Treasury. N.J.S.A. 52:27H-21.20(b); see also N.J.S.A. 52:27H-21.22 to -21.22b; N.J.A.C. 17:46-1.4(a) and (b).

In addition, Treasury must "[m]onitor the status of certified businesses to [e]nsure continued compliance with the criteria for certification and control by the appropriate persons." N.J.S.A. 52:27H-21.20(e). Accordingly, N.J.A.C. 17:46-1.8(a)(2) provides that Treasury may revoke a certification if it determines that the business no longer meets the certification criteria. Moreover, the Legislature has provided for criminal sanctions for abusing the

certification process. N.J.S.A. 52:27H-21.22c. "Any applicant who knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled . . . shall, upon conviction, be guilty of a crime of the fourth degree." Ibid.; see also N.J.A.C. 17:46-1.4(c)(2) (providing for additional sanctions for knowingly supplying false information, including financial penalties, disqualifications, and revocations of certifications).

Treasury's regulations allow third parties to "challenge the qualifications of an applicant or a certified entity." N.J.A.C. 17:46-1.9(a). The third-party challenger must submit a written statement with "specific grounds for challenging the certification." N.J.A.C. 17:46-1.9(b). When a challenge is submitted, Treasury must notify the affected businesses and "shall conduct a hearing on the matter." N.J.A.C. 17:46-1.9(c) and (d). The hearing, however, is limited either to a review of the documents in the record or a review of those documents and an "in-person presentation." N.J.A.C. 17:46-1.9(d). Treasury "has sole discretion to determine if an in-person presentation is necessary to reach an informed decision on the matter(s) of the [challenge]." N.J.A.C. 17:46-1.9(d)(2).

Treasury must issue a written decision concerning a challenge. N.J.A.C. 17:46-1.9(d)(3). In that regard, Treasury's regulations state:

> The Director shall resolve any challenge received by written decision based on the Director's, or his or her designee's, review of the written record including, but not limited to, the business's application, the written appeal, pertinent administrative rules, statutes, and case law, and any associated documentation deemed appropriate. In cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing. The burden of proof lies with the third-party challenger. However, the Division may use its own resources to ascertain the viability of a challenge and the status of a business[.]
>
> [Ibid.]

The decision issued by the Director, or the Director's designee, is a final agency decision, which can be appealed to this court. N.J.A.C. 17:46-1.9(d)(4); see also R. 2:2-3(a)(2).

No New Jersey cases have interpreted the statutory and regulatory provisions addressing WBE certification. The Legislature has, however, expressly referred to federal law in evaluating WBE certifications. Indeed, the Legislature has stated that New Jersey's criteria for WBE certification should "conform to federal law or regulations" except as inconsistent with the statute governing WBE certification. N.J.S.A. 52:27H-21.20(a); see also N.J.A.C. 17:46-1.11(e). Accordingly, in examining Curio's challenges, we consider relevant federal law and regulations because they "are useful in developing an

analytical framework." Pomanowski v. Monmouth Cnty. Bd. of Realtors, 89 N.J. 306, 314 (1982).

Federal regulations governing disadvantaged business enterprises (DBE) are largely consistent with New Jersey's law governing WBE certification. For example, both impose a fifty-one percent ownership requirement for certification. Compare N.J.S.A. 52:27H-21.18(h) and N.J.A.C. 17:46-1.2 with 49 C.F.R. § 26.69(b). And both require that the ownership be real, substantial, and continuing. Compare N.J.A.C. 17:46-1.3(d)(1) with 49 C.F.R. § 26.69(c)(1). Moreover, both require that owners have authority over the affairs of the business, including day-to-day decision-making. Compare N.J.S.A. 52:27H-21.18(a) and N.J.A.C. 17:46-1.2 with 49 C.F.R. § 26.71(d). DBE regulations require that owners possess "an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations," 49 C.F.R. § 26.71(g). By contrast, New Jersey law does not explicitly require a showing of technical expertise to demonstrate control of a business.

Curio first takes issue with Treasury's alleged lack of analysis or determination of whether Holistic, Altus, or CHM are presently qualified for WBE certifications. In that regard, Curio argues that Treasury improperly

limited its review to the decisions to certify the businesses in 2019 and 2021 and failed to consider whether the businesses were presently entitled to WBE certifications.

In response to Curio's challenges, Treasury reviewed the WBE certifications granted to Altus, Holistic, and CHM in 2019 and 2021. Treasury found that those certifications were granted consistent with statutory directives and the applications were supported by adequate evidence that the businesses were women's businesses.

When Treasury began its review in 2021, Holistic and Altus had just been granted permits to operate the AT Centers. They had not yet begun operation. CHM was not granted a permit and, therefore, was not operating. Thus, the materials reviewed by Treasury in connection with the 2019 and 2021 certifications consisted of the businesses' organizational documents, such as operating agreements, certifications, verifications, and resumes submitted by certain owners, and responses to specific questions posed by DORES. We do not discern anything arbitrary, capricious, or unreasonable in Treasury's decision to review the certifications granted in 2019 and 2021. Indeed, Curio has not demonstrated that Treasury's issuance of those certifications or its

review of the challenges to those certifications, were arbitrary, capricious, or unreasonable.

The evidence submitted by Curio largely required Treasury to evaluate how the businesses would be operated in the future when the businesses were up and running. Curio identified some significant questions concerning the relative inexperience of the women identified as the owners and controllers of the businesses as compared with their husbands or male business partners. Nevertheless, because the businesses were not in operation at the time the certifications were issued, there was no clear evidence that the businesses would be operated contrary to their operating agreements. In other words, the purported lack of technical expertise in the cannabis industry possessed by these women as compared to their husbands or male business partners does not necessarily mean the businesses will be controlled by men. To conclude otherwise would be to credit optics and assumptions over evidence.

Critically, Treasury acknowledges its obligation to continue to monitor and review the WBE status of Holistic and Altus. As Holistic and Altus begin to operate, Treasury will have the authority and responsibility to monitor and ensure that the businesses are operating as WBEs. See N.J.S.A. 52:27H-21.20(e). Further, Treasury has the authority to revoke the WBE certifications

of Holistic or Altus. N.J.A.C. 17:46-1.8(a). Moreover, the CR Commission's post-award accountability measures state that maintaining WBE certification is an "ongoing material condition of the [permit] award." When it comes time for Altus and Holistic to renew their permits, they will need to inform the CR Commission of whether their WBE certification has been revoked by Treasury. N.J.A.C. 17:30A-7.7.

Finally, we reject Curio's arguments that it was entitled to an in-person hearing. As a third-party challenger to the WBE certifications, Curio had no right to an adversarial hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -31. See N.J.S.A. 52:14B-3.1. Treasury, therefore, had discretion under its regulations to determine if an in-person presentation was necessary. N.J.A.C. 17:46-1.9(d)(2). Given the nature of Curio's challenges to the WBE certifications, we discern no abuse of discretion in the decision not to conduct an in-person presentation.

In summary, we discern nothing arbitrary, capricious, or unreasonable in Treasury's decisions to reject Curio's challenges to the WBE certifications issued to Altus, Holistic and CHM. Therefore, we affirm the final agency decisions appealed in A-3159-21.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.
CLERK OF THE APPELLATE DIVISION